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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/458,862	12/10/99	HUBEL	600-451051

021186 HM12/0416
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH
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EXAMINER

PESELEV, E

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 04/16/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 3/2/01

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-12, 14-24 and 26-36 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☐ Claim(s) 1-12, 14-24 and 26-36 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of Reference Cited, PTO-892
Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
Interview Summary, PTO-413
Notice of Draftsperson's Patent Drawing Review, PTO-948
Notice of Informal Patent Application, PTO-152

458,862
-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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The numbering of claims is not accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 37-38 have been renumbered 35-36.

Claims 1-12, 14-24 and 31-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over LAREX Material Safety Data sheet or the PCT Patent No. WO 97,35472 for the reasons set forth in the Office Action of October 25, 2000.

Applicant's arguments filed March 2, 2001 have been fully considered but they are not persuasive.

Applicant contends that LAREX disclose media employed to separate cells but does not disclose cryopreservation solution. This argument has been found persuasive with respect to the method claims. However, the composition encompassed by the instant claims is the same as the composition disclosed by LAREX and that it is used for a different purpose does not result in a patentably distinct composition.

Claims 1-12, 14-24 and 26-36 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over PCT Patent No. WO 97/35472 for the reasons set forth in the Office Action of October 25, 2000.

Applicant's arguments filed March 2, 2001 have been fully considered but they are not persuasive.

It has been noted that the PCT patent is directed to compositions and methods for cryopreserving somatic cells, including blood cells. Further, the PCT patent disclose that

arabinogalactan is highly compatible with a wide variety of different cell types. Further, the PCT patent disclose that the use of DMSO is optional and the instant claims do not exclude the use of DMSO. Further, note that claims 1-12 and 33-35 are directed to nothing more than a balanced electrolyte solution containing arabinogalactan.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peshev whose telephone number is (703) 308-4616. The examiner can normally be reached on weekdays from 9.30 a.m. to 6.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

elli peshev
ELLI PESELEV
PRIMARY EXAMINER
GROUP 1800